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SUBJECT: MADAGASCAR: CHILD LABOR INFORMATION FOR TRADE AND
DEVELOPMENT ACT (GSP) 2008 REPORT

REF: 08 STATE 127448

11. SUMMARY: The battle against child labor in Madagascar is being fought on several levels, with the GOM, civil society, and the international community working to coordinate policy, develop capacity, and get children out of work and into school. While the situation on the ground is still rather dire with 1.8 million children economically active, the legislative foundations are in place; the ILO and UNICEF continue to push for further laws concerning punishments and authorities, but Madagascar's greatest challenges are now the implementation of the GOM's ambitious plans. Following are detailed responses to refTel's specific questions. END SUMMARY.

A) Laws and regulations proscribing the worst forms of child labor

- What laws have been promulgated on child labor in the country?
Following is a chronological list of relevant laws, decrees, and ratifications of international conventions and charters.

1991

- International Convention on the Rights of the Child

1992

- African Charter on the Rights and Welfare of the Child

1999

- Convention 138 on the minimum working age (set to 15 years)

2000

- Optional Protocol on the Involvement of Children in Armed Conflict

- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

2001

- Convention 182 on the Worst Forms of Child Labor

2003

- Ministry of Justice, Office of Reforms, launched an effort to bring Malagasy law in line with outstanding conventions and treaty obligations concerning the rights of and protections for children

2004

- Law no. 2003-044 on the Labor Code

- National Action Plan to Fight Child Labor (a 15-year program from 2004 to 2019)

- Decree no. 2004-985 on the creation, mission, and composition of the National Committee for the Fight Against Child Labor (CNLTE)

2005

- Decree no. 2005-523 modifying decree 2004-985

- Law no. 2007-023 concerning rights and the protection of children

- Launch of the "Red Card Against Child Labor" campaign

2007

- Law no. 2007-038 modifying the penal code concerning the fight against human trafficking and sexual tourism

- Implementation of "Regional Observatories on Child Labor" (ORTE),

eight are currently in place

- Decree 2007-563 on child labor, including the worst forms of child labor

- What is the country's minimum age for admission to work? Children must be at least 15 years old for employment, in accordance with compulsory education to age 14.

- Are there exceptions to the minimum age law? According to Article 102 of Law no. 2003-044, children may obtain special authorization from a labor inspector to engage in certain forms of light work, if they have finished their compulsory education.

- What is the minimum age for admission to hazardous work, and what additional provisions has the country enacted regarding children's involvement in hazardous work?
According to Decree no. 2007-563, children must be at least 18 years old to engage in hazardous work, with specific regulations concerning the load that they are permitted to carry or transport.

- What laws have been promulgated on the worst forms of child labor, such as forced child labor and trafficking or child prostitution and pornography?

Madagascar's main legal framework for the worst forms of child labor is Law no. 2007-023, from August 20, 2007, on the rights and protections of the child. Law no. 2007-038, adopted January 14, 2008, modifies and completes certain elements of the Penal Code concerning the fight against trafficking in persons and sexual tourism. Law no. 2003-044 from July 2004 amends the labor code concerning child labor, while Decree no. 2007-563 specifies Madagascar's worst forms of child labor.

- Please specify what worst forms are prohibited and describe penalties for violations.

According to Articles 10 of Decree no. 2007-563, the worst forms of child labor are those involving immoral work, labor that exceeds the child's strength, forced labor, or unhealthy work. Articles 11 through 20 specify specific types of labor that are proscribed:

Article 11 - the production or sale of materials (such as publications or media) which are illegal and immoral;

Article 12 - work in bars, clubs, casinos, gambling houses, or cabarets;

Article 13 - employment of children, of either sex, to do sex-related work including but not limited to prostitution, pornography, or commercial sexual exploitation;

Article 14 - employment of children, of either sex, to be involved with the production or trafficking (supply, sale, distribution, delivery, etc.) of narcotics;

Article 15 - sale or trafficking of children for forced or obligatory work (i.e. to pay a family debt, for slavery, for armed conflict);

Article 16 - employment of children as domestic servants;

Article 17 - employment in places with vehicles, machinery, or other equipment that are susceptible to an occasional mishap (i.e. generators, motors, elevating devices such as cranes);

Article 18 - employment of children in industrial areas that are susceptible to an occasional mishap due to the use of heavy equipment/machinery that cuts, crushes, grinds, mixes, saws, etc. and sewing machines powered by electric motors or pedals;

Article 19 - employment of children in a place where there are flammable, toxic, or chemical materials; a place that prepares, distills, or uses corrosive substances, gas, or explosives; or a place that emits harmful gases;

Article 20 - employment of children in the harvesting of toxic plants or those that are harmful to the child's health.

Penalties for most of the provisions of this decree are addressed through the Labor Code, while those concerning immoral work are addressed through some articles of the Penal Code (as described in Articles 23-24 of this decree). Penalties stipulated in the Penal Code are up to 2 years of imprisonment and fines up to MGA 2 million (USD 1,060).

- What is the country's minimum age for military recruitment and/or involvement in armed conflict?

The minimum age for recruitment and/or involvement in armed conflict

is 18 years of age.

- If the country has ratified ILO Convention 182 on the Worst Forms of Child Labor, has it developed a list of occupations considered to be worst forms of child labor, as called for in article 4 of the Convention?

Decree no. 2007-563 on child labor provides a list of the worst forms (see above concerning Articles 11 through 20).

B) Regulations for implementation and enforcement of proscriptions against the worst forms of child labor

- What legal remedies are available to government agencies that enforce child labor and worst forms of child labor laws (civil fines, criminal penalties, court orders), and are they adequate to punish and deter violations?

Per Section A above, penalties are provided in the Labor Code and the Penal Code, with up to 2 years of imprisonment and fines up to MGA 2 million (USD 1,060). Magistrates do have some discretion on sentencing which has often resulted in significantly reduced penalties; the majority of 17 recent cases of abduction in Nosy Be resulted in only suspended prison sentences. Contacts in international organizations working in the field consider these penalties inadequate to deter such crimes. The International Labor Organization (ILO) is working with the Malagasy government to draft a new law with tougher sanctions.

- To what extent are violations investigated and addressed?

Law enforcement officials are not adequately trained or motivated to pursue these violations, and the Ministry of Labor's 71 labor inspectors are generally focused on violations within the formal economy, although they have been given training and information on addressing child labor. The five inspectors devoted to child labor are insufficient to reach beyond Antananarivo, and even within the capital they do not have the resources to investigate the informal economy.

- What level of resources does the government devote to investigating child labor and worst forms of child labor cases throughout the country?

The official budget devoted to child labor is included within the Ministry of Labor's budget through the Public Investment Program (PIP). Malagasy government statistics show expenditure of MGA 521 million (USD 275,000) on child labor; that does not include related programs in other ministries (such as Health and Education) that have had an impact on child labor.

- How many inspectors does the government employ to address child labor issues?

The Ministry of Labor has five labor inspectors dedicated to child labor cases in Antananarivo, and a total of 71 inspectors countrywide. Labor inspectors do not conduct investigations, only formal inspections - which do not reach the informal sector, where most violations occur. Upon finding an infraction, they draft a report and submit it to the prosecutor's office.

- How many police or other law enforcement officials address worst forms of child labor issues?

Child labor cases, like all other cases involving children, are dealt with by units of the Morals and Minors Brigade. These specialized units are present in six major cities around Madagascar, and respond to reports or complaints concerning children. Total staffing numbers are not available.

- How many child labor investigations have been conducted over the past year and how many have resulted in fines, penalties, or convictions?

These statistics are currently unavailable.

- How many investigations into worst forms of child labor violations have been conducted over the past year and how many have resulted in prosecutions and convictions?

These statistics are currently unavailable.

-Has the government provided awareness-raising and/or training

activities for officials charged with enforcing child labor laws or worst forms of child labor laws?

In collaboration with the UNDP and UNICEF, trainings on recent laws and decrees have been held for labor inspectors, magistrates, and law enforcement officials in 2007 and 2008.

C) Whether there are social programs specifically designed to prevent and withdraw children from the worst forms of child labor

- What initiatives has the government supported to prevent children from entering exploitive work situations, to withdraw children engaged in such labor, and to advocate on behalf of children involved in such employment and their families?

A National Committee to Fight Child Labor (CNLTE), and eight regional counterparts (CRLTE), have been established to address child labor issues, playing a coordinating role to establish policy and promote coordination among government, NGO, and IO contacts.

The Ministry of Labor created a system of "welcome centers" in Antananarivo, Toamasina, and Toliara to provide victims assistance, including to victims of child labor. More are planned elsewhere, and the existing ones are meant to serve as a model for NGOs and other partners who work in the field.

A Child Rights Protection Network was created by the Ministry of Health and Family Planning, with support from UNICEF, which operates at the commune level. In 2008, the network grew to include 65 communes (from 14 in 2007), and UNICEF hopes to grow the program to over 200 communes by the end of 2009. The Protection Network supports the coordination of several entities working in the field of children's rights and protection at the local level, including the police, the gendarmerie, the Ministries of Education and Justice, and local authorities. The Network works to identify abuse cases, and assures that victims have access to the appropriate social services available in each area.

D) Does the country have a comprehensive policy aimed at the elimination of the worst forms of child labor?

- Does the country have a comprehensive policy or national program of action on child labor or specific forms of child labor? Madagascar's comprehensive policy, covering the 15-year period from 2004 to 2019, is the National Action Plan to Fight Child Labor. The GOM created the National Committee to Fight Child Labor (CNLTE) and its regional counterparts in October 2004 (with further guidance in 2005) to coordinate and implement this plan.

- Does the country incorporate child labor specifically as an issue to be addressed in poverty reduction, development, educational or other social policies or programs, such as Poverty Reduction Strategy Papers, etc? The reduction of child labor is one of several goals of recent and ongoing educational reforms (under the title of "Education for All") that were begun in June 2008. While reforms thus far have focused on the structure of the educational system (extending compulsory education to age 14, promoting Malagasy language instruction), future plans include an "Open Schools" program which will bring excluded groups into the educational system with off-hours sessions and job-oriented training in addition to the regular curriculum. In addition, the country's national Madagascar Action Plan (MAP), a five-year development program launched in 2007, includes the reduction of child labor as a specific goal (under Commitment 8, Challenge 4). In 2008, four regions (Diana, Boeny, Atsimo Andrefana and Atsinanana) included the fight against child labor in their Regional Development Programs (PRD), giving their efforts a policy backing for the coming year.

- If so, to what degree has the country implemented the policy and/or program of action and achieved its goals and objectives? Efforts by national and regional entities to implement their programs in the fight against child labor have largely focused on the creation of infrastructure for coordination and management in

the fight against child labor, including the CNLTE, the Protection Networks, training of magistrates and law enforcement officials, and public awareness campaigns. The effect thus far of "Education for All" has been the extension of compulsory education from age 12 to age 14, bringing education in line with the minimum employment age of 14. The first reliable baseline data on child labor was published in December 2008 by the ILO; estimates from previous years do not allow for an accurate analysis of the impact that measures taken prior to 2007 have had. While individual programs (such as those run by the ILO or UNICEF) have concrete numbers of children affected, no data is currently available on a national level prior to the December 2008 report.

-Is education free in law and in practice? Is education compulsory in law and in practice?

Education at public schools is free in law and practice, and compulsory to age 14. However, children without birth certificates (33 percent in 2005, according to the MAP) are often unable to enroll for school; a problem which the government is working with UNICEF to correct through a successful and ongoing birth registration project called Ezaka Kopia ho an'ny Ankizy (EKA), or "Efforts for Children's Birth Certificates".

E) Is the country making continual progress toward eliminating the worst forms of child labor?

- What are the specific sectors/work activities/goods in which children work and how has this changed over the past year? Please note where possible any relevant characteristics about the children involved including gender, ethnic group, religion, age, etc.

Of the 1.8 million children (out of a population of 18 million total) estimated by the ILO to be "economically active" in Madagascar, 85 percent are reportedly in the agricultural sector, including farm work, fishing, and livestock. The remaining children work in stone quarrying, mining and the related support industries of mining towns, domestic labor, and the commercial sex industry. 1.4 million of these children are engaged in "harmful" labor, and 438,000 fall into the "worst forms of child labor" category.

No specific groups or categories of children are disproportionately represented in these figures. Gender, ethnic group, and religion do not play a role. To the extent that children in different regions are engaged in different types of activities, this is a result of economics and geography rather than discrimination.

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